

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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MARY STEPHENS-FRAZIER

v.

NATIONAL INSTITUTES OF HEALTH

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Civil No. JFM-07-435

MEMORANDUM

Plaintiff has instituted this action for employment discrimination against her former employer, the National Institutes of Health,<sup>1</sup> asserting claims for race discrimination, hostile work environment, retaliation, and intentional infliction of emotional distress. Defendant has filed a motion to dismiss or for summary judgment. The motion will be granted as one to dismiss as to plaintiff's claim for intentional infliction of emotional distress and as one for summary judgment as to plaintiff's other claims. The motion will be granted in all respects.

Plaintiff's claims are clearly without merit and only a cursory discussion is necessary.

I.

Plaintiff did not file any administrative claim with defendant for intentional infliction of emotional distress. Such a claim is required under the law, 28 U.S.C. §2675(a), and absent the assertion of an administrative claim, this court lack jurisdiction over a course of action as to which the claim should have been filed. *See Henderson v. United States*, 785 F.2d 121, 123 (4th Cir. 1986).

II.

A factual record regarding plaintiff's EEO claims was established during a two-day

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<sup>1</sup>Plaintiff initially filed a pro se complaint but she is now represented by counsel.

hearing held in May 2006 before the Merit System Protection Board.<sup>2</sup> This record establishes beyond doubt that plaintiff was disciplined and ultimately removed from service because of chronic tardiness and absenteeism. The record further discloses that defendant provided ample opportunity for plaintiff to cure her misconduct. These facts are dispositive. Because of them, plaintiff cannot make out a prima facie case for race discrimination because she cannot establish the required element that she was performing her job duties at a level that met her employer's legitimate expectations. *See Hill v. Lockheed Martin Logistics Mgmt.*, 354 F.3d 277, 285 (4th Cir. 2004). Likewise, these facts preclude her from establishing that the adverse actions taken against her were caused by her filing of EEO grievances. Finally, there is nothing "hostile" about taking disciplinary actions against any employee, regardless of her race, who continuously is either tardy or absent and who does not comply with rules imposed upon her by her employer to rectify her tardiness and absenteeism.

A separate order granting defendant's motion is being entered herewith.

Date: May 19, 2008

/s/  
J. Frederick Motz  
United States District Judge

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<sup>2</sup>In opposing defendant's summary judgment motion, plaintiff argues that she is entitled to take discovery in this action. However, she has failed to submit an affidavit under Fed. R. Civ. P. 56(f) specifying the facts that she allegedly requires to oppose defendant's motion. The failure to submit this affidavit is not simply a technical defect, particularly in light of the fact that a full factual record was developed during the administrative hearing.

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 19th day of May  
2008

ORDERED

1. Defendant's motion to dismiss or for summary judgment is treated as one to dismiss  
as to plaintiff's claim for intentional infliction of emotional distress;

2. Plaintiff's claim for intentional infliction of emotional distress is dismissed;

3. Defendant's motion to dismiss or for summary judgment is treated as one for  
summary judgment as to plaintiff's claims for race discrimination, retaliation, and hostile work  
environment; and

4. Judgment is entered in favor of defendant against plaintiff as to plaintiff's claims for  
race discrimination, retaliation, and hostile work environment.

Date: May 19, 2008

/s/

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J. Frederick Motz

United States District Judge